



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2014-0499; FRL- 9914-54-Region-3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Definition of Volatile Organic Compounds**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP). The revisions add five compounds to the list of substances not considered to be volatile organic compounds (VOC). EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on [**insert date 60 days after publication in the Federal Register**] without further notice, unless EPA receives adverse written comment by [**insert date 30 days after publication in the Federal Register**]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0499 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).
- C. Mail: EPA-R03-OAR-2014-0499, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2014-0499. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, (215) 814-5787, or by e-mail at [schmitt.ellen@epa.gov](mailto:schmitt.ellen@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs have different levels of reactivity, that is, some VOCs react slowly or form less ozone, and therefore, changes in their emissions have limited effects on local or regional ozone pollution episodes. It has been EPA's policy that VOCs with a negligible level of reactivity should be excluded from the regulatory definition of VOC contained at 40 CFR 51.100(s) so as to focus control efforts on compounds that do significantly increase ozone concentrations. This is accomplished by adding the substance to a list of compounds not considered to be VOCs, and thus, excluded from the definition of VOC. EPA believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs.

On June 22, 2012 (77 FR 37610) and February 12, 2013 (78 FR 9823), EPA revised the definition of VOC contained in 40 CFR 51.100 to exclude five substances from the definition of VOC and corrected the citation for one substance. The compounds excluded from the definition of VOC are listed as follows: Trans-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze), HCF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-134), HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-236cal2), HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-338pcc13), and HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (also known as HGalden 1040x, H-Galden ZT 130, H-Galden ZT 150, or H-Galden ZT 180). In the February 12, 2013 rulemaking action, EPA also corrected the citation for 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethylpentane (also known as HFE-7300).

## **II. Summary of SIP Revision**

On April 11, 2014, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of adding the compound, “trans-1,3,3,3-tetrafluoropropene” also known as “HFO-1234ze,” to the list of substances that are not considered VOCs as well as minor administrative changes to the definition of “Total suspended particulate,” both contained in 9VAC5-10-20.

On May 22, 2014, the Commonwealth of Virginia submitted a formal revision to its SIP which consists of adding four additional compounds to the list of substances that are not considered VOCs found at 9VAC5-10-20; these compounds are as follows: HCF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-134), HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-236cal2), HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (also known as HFE-338pcc13), and HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (also known as HGalden 1040x, H-Galden ZT 130, H-Galden ZT 150, or H-Galden ZT 180). In addition, the May 22, 2014 submittal also made minor administrative corrections to the citation for 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethylpentane (also known as HFE-7300).

In total, the April 11, 2014 and May 22, 2014 SIP revisions will allow the Virginia SIP to mirror the Federal definition of VOC. EPA believes that by excluding these negligibly reactive compounds from the definition of VOC an incentive is created for industry to use negligibly reactive compounds in place of more highly reactive compounds; therefore, the air quality in Virginia will not be negatively affected by the approval of these SIP revisions particularly as EPA has found these compounds negligibly reactive for ozone formation.

### **III. Corrections**

On November 21, 2011 (76 FR 71881), EPA published a Final Rulemaking Notice which updated the materials incorporated by reference into the Virginia SIP. In that rulemaking action, EPA instructed the Office of the Federal Register to remove the first five entries for Section 5-10-20 from the table contained in paragraph (c) of 40 CFR 52.2420 and retain the remaining entries for that section. Inadvertently, those five entries were not removed, and the remaining entries for Section 5-10-20 that were intended to be retained were mistakenly removed. In today's rulemaking action, EPA corrects that error. The entries that were intended to be retained in the November 21, 2011 rulemaking action were for four previously approved SIP revisions that revised 9VAC5-10-20; these revisions to the Virginia SIP were previously approved by EPA between March 2004 and February 2011.

### **IV. Final Action**

EPA is approving the revisions to the definition of VOC, submitted by Virginia on April 11, 2014 and May 22, 2014, as a revision to the Virginia SIP. In addition, EPA is correcting an error in which previous entries to the table in paragraph (c) of 40 CFR 52.2420 were inadvertently removed. EPA is publishing this rule without prior proposal because EPA views this as a

noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

#### **V. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a

voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts...” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.” Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any

event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## **VI. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);



- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication

of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, revising the definition of VOCs, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 11, 2014.

W. C. Early, Acting  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart VV—Virginia**

2. In § 52.2420, the table in paragraph (c) is amended by adding five entries for Section 5-10-20 after the entry for Section 5-10-20 with a State effective date of 1/1/98. The additions reads as follows:

#### **§ 52.2420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation [former SIP citation]</b>
* * * * *	* * *			
<b>9 VAC 5, Chapter 10, General Definitions [Part I]</b>				
* * * * *	* * *			
5-10-20	Terms Defined	8/1/02	3/15/04, 69 FR 12074	Terms Added: EPA, Initial emissions test, Initial performance test (as corrected 11/05/03 and effective 01/01/04 in the Commonwealth), Maintenance area. Terms Revised: Affected facility, Delayed compliance order, Excessive concentration, Federally enforceable,

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation [former SIP citation]</b>
				Malfunction, Public hearing, Reference method, Reid vapor pressure, Stationary source, True vapor pressure, Vapor pressure, Volatile organic compounds. Terms Removed: Air Quality Maintenance Areas.
5-10-20	Terms Defined	5/04/05	8/18/06, 71 FR 47742	Revised definition of “volatile organic compound”.
5-10-20	Terms Defined	4/2/09	2/25/10, 75 FR 8493.	Revised definitions of Ambient air quality standard, Criteria pollutant, Dispersion technique, Emission limitation, Emission standard, Excessive concentration, Feral Clean Air Act, Federally enforceable, Good engineering practice, Initial emission test, Initial performance test, Public hearing, Reference method, Regulations for the Control and Abatement of Air Pollution, Reid vapor pressure, Run, Standard of performance, State enforceable, These regulations, True vapor pressure, Vapor pressure, and Volatile organic compound.
5-10-20	Terms Defined	2/18/10	2/14/11, 76 FR 8298	Revised definition of “Volatile organic

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
				compound”
5-10-20	Terms Defined	12/5/13, 3/27/14	[Insert <u>Federal Register publication date</u> ] [Insert <u>page number where the document begins</u> ]	Revised definition of VOC
* * * * *	* * *			

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[FR Doc. 2014-18478 Filed 08/06/2014 at 8:45 am; Publication Date: 08/07/2014]